

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



76-6187

To be Argued by  
Sarah D. Bollovin

UNITED STATES COURT OF APPEALS

For the Second Circuit

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Docket no. 76-6187

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SARAH D. BOLLOVIN,  
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellee.

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On Appeal From The  
United States District Court  
Southern District of New York

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B R I E F

FOR PLAINTIFF-APPELLANT

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Sarah D. Bollovin, Pro Se,  
Plaintiff-Appellant  
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Statement Of The Case

This is an appeal from a decision of the United States District Court, Southern District of New York (Dudley B. Bonsai, J.) entered judgment for the Government.

Plaintiff-Appellant instituted this action pro se. At a pre-trial hearing on September 30, 1975, Judge Bonsai discovered that plaintiff had been referred to Richard M. Rosenberg, Esq., a tax expert with the firm of Kaufman, Taylor, Kimmel and Miller. Mr. Rosenberg met with plaintiff for one-half hour on February 12, 1975 at which time he assured her there was merit to her claim, however this was his contribution to the New York Bar Association Legal



Referral Service and he could not devote more time to a claim for \$1,058.00. Plaintiff never spoke with Mr. Rosenberg again.

The Court was extremely anxious to secure counsel for plaintiff. At the Court's request Stanley L. Kaufman, Esq., entered an appearance on plaintiff's behalf on October 14, 1975. Plaintiff spoke with Mr. Kaufman on November 24, 1975 and requested that she be kept fully informed. On December 8, 1975 Mr. Kaufman argued the Government's motion to dismiss plaintiff's complaint. Had plaintiff known of this proceeding and been in Court, she is of the opinion and belief this appeal might be unnecessary. On March 22, 1976 Mr. Kaufman served a Second Amended Complaint which plaintiff discovered while preparing the Record On Appeal (Appendix). The following Items appear: (A-15)\*

"Item 7: In 1968 the Newark Board of Education voted to allow its employees to participate in a tax-sheltered program under said Section 403 I.R.C. Plaintiff... was told to write to Trenton, N.J. for application... to SACT."

Item 9: Plaintiff... made voluntary contributions to SACT, from 1968 until ... 1972 ,,,

This is false. Plaintiff wanted the VALIC tax-sheltered plan-- not SACT.

"Item 13: Plaintiff claimed credit in the sum of \$1,058.00 based on the aforesaid SACT deductions made by the Newark, New Jersey Board of Education."

Plaintiff claimed credit for \$1,058.00 based on the fact that the monies should have gone to VALIC RATHER THAN SACT IN ERROR.

\*All references to Record On Appeal are in the Appendix with pages numbered A1 to A 63.



It will be noted that the Government's Exhibit A (A-19) is an application for SACT deductions dated 12-15-66. This plan preceded the tax sheltered program.

New Jersey Statutes Title 18A 66-128 provide for Reduction in salary only for purpose of benefits under par. 403(b) I.R.C. The prior provision is the N.J.Code 18:5-50-22 (L.1966, c.287,#2).

In 1968 the Newark Board of Education voted to grant employees the new tax-sheltered privilege. Accordingly, plaintiff-appellant began efforts to end SACT deductions in favor of a Variable Annuity Life Insurance Company new tax-sheltered benefit program (VALIC).

Notwithstanding the change in law, plaintiff's SACT deductions continued against her will under the 1966 application (A-19). Plaintiff was not successful in obtaining her first VALIC tax-sheltered deduction for \$1,000.00 until the end of 1970.

Plaintiff refers to Defendant's Exhibit B (A-20) last paragraph of letter to Mr. Aaron Mednick:

"I elected the VALIC tax sheltered program... Because of the ineptitude and incompetence of Board personnel... amounts never authorized were wrongly sent to the Division of Pensions Fund c SACT, instead of the tax-sheltered VALIC program." (Emphasis added).

Ironically, this is the only reference made to the true facts and it is in the Government's Exhibit (A-20). This information was completely omitted. All references are to SACT which was the sole means of building plaintiff-appellant's retirement fund in 1966. However, in 1968 the SACT plan was superseded by VALIC because of a change in the Internal Revenue Service rules and regulations which now permitted tax-sheltered payroll deductions.



Plaintiff-appellant would not have been taxed the \$1,058.00 had the Board of Education personnel sent the funds to VALIC rather than to SACT IN ERROR, and feels that she should not be penalized by this tax through error beyond her control.

#### CONCLUSION

Plaintiff-appellant believes that the omission of facts is serious; that had all the facts been fully and clearly presented, Judge Bonsal would have ruled in her favor and against the Government.

"Statutes relating to refunding of income taxes paid... should receive a practical construction to effectuate their purpose. Kales v. U.S., C.C.A. Mich. 1940, 115 F.2d 497, affirmed 62 S.Ct. 214, 314 U.S. 186, 86 L.Ed. 132. "

"Allegations of pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 92 S.Ct. 594, 404 U.S. 519, 30 L.Ed.2d 652, rehrg. den. 92 S.Ct. 963, 405 U.S. 948, 30 L.Ed.2d 819."

Dated. New York, N.Y.  
March 7, 1977.



Sarah D. Bollotin, Pro Se  
Plaintiff-Appellant



①  
COPY RECEIVED

Robert B. Fiske, Jr.  
UNITED STATES ATTORNEY

3/8/77

Marion J. Bryant